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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCEL LEMARR CAREY,

Defendant and Appellant.

A159510

(San Mateo County
Super. Ct. No. 18SF004171)

Defendant Marcel Lemarr Carey appeals the sentence imposed after he pled no contest to a felony charge of injuring the mother of his child following a prior conviction for such conduct and admitted a prior strike. Pursuant to his plea agreement the court sentenced defendant to four years in prison, with credits of 269 days, and ordered him to pay \$400 in fines and assessments and \$1,577 in restitution. Defendant's appointed attorney has submitted a brief in accord with *People v. Wende* (1979) 25 Cal.3d 436 and advised defendant of his right to submit a supplemental brief, which defendant has not done. This court's review of the record has disclosed an omission in the abstract of judgment that requires correction, but no issues that warrant further briefing.

The district attorney filed a four-count information charging defendant with three felonies—injuring a cohabitant/mother of his child after a prior

conviction for such conduct (§ 273.5, subd. (f)(1)),¹ assault by means likely to cause great bodily injury (§ 245, subd. (a)(4)), and false imprisonment by violence (§ 236)—and one misdemeanor, preventing the use of a cellphone to call law enforcement (§ 591.5). The information alleged that defendant was ineligible for probation under section 1203, subdivision (e)(4) because he had two prior felony convictions—a 2010 conviction for transporting marijuana (Health & Saf. Code, § 11360) and a 2011 conviction for first-degree burglary (§ 459)—and it alleged that the latter conviction also constituted a strike, subjecting defendant to a doubled sentence for a new felony (§ 1170.12, subd. (c)(1)).

Defendant pled no contest to count one, injuring a cohabitant while having a prior conviction therefor, and admitted the prior strike. The remaining counts and the allegation of two prior convictions were dismissed. The trial court made the requisite findings to accept the defendant’s plea and affirmed the agreement calling for a four-year maximum sentence.

The probation office filed a report recommending that the court deny probation and impose the low term under section 273.5, subdivision (f) of two years in prison, doubled for the strike. The report noted defendant’s denial of personal responsibility for the strike offense and for his prior misdemeanor conviction under section 273.5, subdivision (a); his initial denial but subsequent acceptance of responsibility for the current offense, as well as his expression of remorse, which “appears to be a pattern for him after engaging in violence”; and his realistic future plans to be gainfully employed and care for his children.

¹ Statutory references are to the Penal Code unless otherwise stated.

Defendant filed a *Romero*² motion asking the court to exercise its discretion to dismiss the prior strike allegation in the interests of justice. He noted that his strike was for a nonviolent burglary seven years earlier; that the current offense caused no permanent injury; that the current victim urged treatment and rehabilitation for defendant's alcohol abuse rather than incarceration, which had no rehabilitative effect in the past; and that defendant had expressed remorse, accepted responsibility, and had plans for employment. The People opposed the motion, noting the violence of the offense, which involved multiple attacks and injuries, several directed at the victim's neck; the defendant's prior conviction for similar violence against a different victim, after which he also expressed remorse; and his three past probation violations.

The court denied the motion. It noted the violence of the current offense; the victim's description of a permanent scar from a prior, uncharged assault; the defendant's denial of responsibility for his prior strike offense and the current offense; the victim's description of defendant as "very manipulative," which accorded with the apparent lack of sincerity of his remorse and desire to seek treatment for alcohol abuse; and the unlikelihood that, given his history, he would perform well on probation.

The court denied probation and, as indicated above, sentenced defendant to the low term under section 273.5, subdivision (f) of two years in prison, doubled for the strike, and awarded 269 days' credit. The court imposed a \$300 restitution fine (§ 1202.4), including a 10 percent collection fee (§ 1202.4, subd. (l)), imposed and stayed a \$300 parole-revocation restitution fine (§ 1202.45), and imposed a \$40 court operations assessment (§ 1465.8) and \$30 criminal conviction assessment (Gov. Code, § 70373,

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

subd. (a)(1)). It also ordered defendant to pay \$1,577 in restitution to the Victim Compensation Board for medical expenses that the Board had paid on the victim's behalf, while reserving jurisdiction to order further restitution.

Defendant's appointed counsel has filed a brief and a declaration indicating his determination that there are no viable issues to raise on appeal, and this court's review of the record has not disclosed any such issues. We note that, although the sentencing hearing was held almost a year after the publication of *People v. Dueñas* (2019) 30 Cal.App.5th 1157, no mention was made of defendant's ability or inability to pay the fines and assessments. Defendant did not object to their imposition based on inability to pay or any other ground and, thus, forfeited any objection. (See *People v. Cowan* (2020) 47 Cal.App.5th 32, 34, review granted June 17, 2020 (S261952) ["a sentencing court may not impose . . . restitution fines without giving the defendant, on request, an opportunity to present evidence and argument why such monetary exactions exceed his ability to pay"].)

We note that, although the abstract of judgment accurately refers to the total fines and fees of \$400, it fails to reflect that this amount includes the \$40 court operations assessment (§ 1465.8) and \$30 criminal conviction assessment (Gov. Code, § 70373) imposed by the court.

Disposition

The judgment is affirmed. The trial court is ordered to correct the abstract of judgment to reflect the imposition of a \$40 court operations fee and a \$30 criminal assessment fee as part of the \$400 in total fines and fees.

POLLAK, P. J.

WE CONCUR:

TUCHER, J.
BROWN, J.